

E-132,299/SA-88-996 ORDER ACCEPTING SETTLEMENT AND CHANGING SERVICE
AREA BOUNDARIES

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm
Tom Burton
Marshall Johnson
Cynthia A. Kitlinski
Dee Knaak

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of the City of Rochester to Adjust its Service Area Boundary with People's Cooperative Power Association, Inc.

ISSUE DATE: July 15, 1994

DOCKET NO. E-132,299/SA-88-996

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CHANGING SERVICE AREA
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PROCEDURAL HISTORY

This case is a consolidation of several dockets involving interrelated service area boundary and compensation disputes between two neighboring utilities, People's Cooperative Power Association, Inc. (People's) and the City of Rochester. The Commission first referred the case to the Office of Administrative Hearings for contested case proceedings on September 14, 1989. Administrative Law Judge Phyllis A. Reha was assigned to the case. The parties are the City, People's, and the Department of Public Service (the Department).

At the outset the parties and the Administrative Law Judge agreed that the most efficient way to proceed would be to hold evidentiary hearings in two phases. Phase I would determine the original service area boundaries of the two utilities, their current service area boundaries, and whether the circumstances of any unauthorized service extensions warranted referral for penalty proceedings. Phase II would determine appropriate compensation for the City's acquisition of all portions of People's' service territory within the Rochester city limits.

Phase I was completed on December 28, 1990. Phase II evidentiary hearings were delayed because a central legal issue (the compensability of "bare ground" acquisitions) was before the appellate courts and by motions for summary disposition of threshold issues.

In November 1993 the parties opened settlement negotiations. On April 26, 1994 the Administrative Law Judge transmitted to the Commission an agreement signed by all parties settling all issues in the case, subject to the approval of this Commission and the United States Rural Electrification Administration (REA).

On May 18, 1994 the City and People's filed a joint petition to change their service area boundaries to reflect the agreement, effective upon its approval by the REA. They said they had filed a map with the Administrative Law Judge delineating the agreed-upon changes.

The settlement agreement and the petition to change service area boundaries came before the Commission on June 30, 1994.

FINDINGS AND CONCLUSIONS

Minn. Stat. § 216B.44 (1992) authorizes any municipal utility to serve any area within its corporate boundaries upon paying appropriate compensation to the displaced utility. The statute encourages municipal and displaced utilities to reach agreements on compensation, but authorizes the Commission to determine compensation if they are unable to agree.

People's and the City have acted within the intent of the statute in reaching this agreement. The Commission has examined the agreement and finds that it fully resolves all issues in the case, comports with the purposes and requirements of Minn. Stat. § 216B.44 (1992), and is in the public interest. The agreement will be approved, contingent upon its approval by the REA.

Similarly, the Commission will grant the petition to change the utilities' service area boundaries to reflect the terms of the agreement, effective upon the agreement's approval by the REA. The Commission will require the parties to notify the Commission immediately upon receipt of the REA's decision.

ORDER

1. The Commission accepts, adopts, and incorporates herein by reference the attached settlement agreement.
2. The Commission grants the parties' request to change their service area boundaries to reflect the terms of the attached agreement, effective upon the agreement's approval by the REA.
3. Within 24 hours of receiving notice of REA action on the attached agreement, the parties shall inform the Commission and the Department.
4. Upon notification of the attached agreement's approval by the REA, the Department shall change the official service area maps to reflect the agreement as set forth in the map the parties have filed with the Administrative Law Judge.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)